CHAPTER III

STATE REGULATION OF COMPETITIVE ENERGY SUPPLIERS

The Rationale for State Consumer Protection Regulation

While the move to retail electric competition is often referred to as "deregulation," this description is not entirely accurate. No state has proposed that the retail sale of electric or gas services be totally deregulated. Rather, this description is most often used to refer to the repeal of the state's traditional authority over prices charged for generation services. Traditionally, pricing authority has been exercised at the state level by a public utility commission which reviews and approves any rate or charge for services provided to retail customers. Rates, charges, and the terms of service are then set forth in "tariffs" that are mandatory terms or conditions of service under which utilities may provide services to customers.

While prices themselves will not be regulated, many other aspects of the bargain between the energy service provider and the customer, particularly the residential customer, will be subject to state regulation. State regulation will be based on consumer protection principles that form the basis for regulation of many products and services marketed to residential customers. State regulation is often justified by the importance of a particular product or service to consumer health and welfare. For example, housing prices are rarely regulated, but housing units must typically

> Retail electric and gas competition substitutes contracts between parties in place of traditional state-approved tariffs. The buying and selling of generation services is thus governed by the law of contracts and not the non-negotiable tariffs of a fully regulated public utility industry.

conform to state and local standards to prevent the sale or rental of substandard housing. State regulation also protects individual consumer bargaining power when dealing with sellers who seem to hold "all the cards" in the bargaining game. Consumers are often presented with "contracts of adhesion," which are pre-printed contracts that contain detailed terms that bind them after the deal is struck and over which they have little bargaining ability. In other words, while nominally competitive, the market may be one that favors one side of the bargain unduly even if the price is technically subject to competition. Rental housing, consumer credit, and insurance are examples of industries in which states have traditionally played an active role in regulating contract terms. Regulatory action may take the form of disclosure (uniform methods of price disclosure, plain language contract requirements) or outright regulation of certain terms (prohibiting certain practices, allowing a contract term only under certain conditions and with certain disclosures, providing a right of rescission or cancellation).

The sale of electricity is a prime candidate for this traditional form of state consumer protection and contract regulation for several reasons. First, electricity is a necessity of life. Most state and local housing laws include lack of electricity and heating in the definition of "substandard housing."[25] Second, consumers are not prepared to shop for electricity after almost a century of "cradle to grave" regulation over every aspect of their electric and gas utility services. Even in New Hampshire, after extensive publicity and marketing efforts by suppliers which began early in 1997, most residential and small commercial customers were not aware of retail electric competition or the probable impact of competition on their monthly electric bill in a survey conducted in the fall of that year.[26] Results such as these suggest that consumers are not prepared for dramatic changes and may need additional consumer protections during a transitional period.

And third, most contract terms offered to residential and small business consumers will not be subject to negotiation. They will resemble typical "contracts of adhesion," which have boilerplate provisions not subject to individual negotiation. Therefore, it is likely that states will seek to regulate some aspects of the contractual bargain between the sellers of competitive energy services and residential and small commercial customers. Such state regulations should be applicable to transactions by both distribution companies (with regard to the direct provision of generation services) and retail electric suppliers in their dealings with residential and small commercial customers. Most states to date have concluded that transactions by larger commercial and industrial customers do not need standardized protections.

Finally, the need for state contract regulation and consumer protection reflects lessons learned during telephone deregulation. Many states have taken steps to regulate certain electric competition practices based on their experience with, and customer reaction to, long distance telephone competition.

Existing State and Federal Consumer Protection

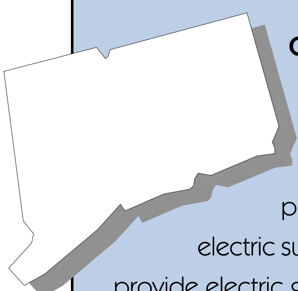
The regulation of competitive energy suppliers should reflect existing state and federal consumer protection laws, the most important of which are briefly highlighted below.

Application for Credit

The federal Equal Credit Opportunity Act (ECOA)[27] applies to the granting of "credit," including credit for utility services.[28] The term "credit" in this federal statute is defined very broadly to include any agreement in which the obligation to pay is deferred, even when there is no finance charge and regardless of the number of installments required for repayment. The ECOA prohibits credit discrimination on the basis of race, color, sex, marital status, religion, national origin, age, handicap, receipt of public assistance (such as the receipt of Temporary Assistance for Needy Families (TANF), formerly the Assistance for Families with Dependent Children (AFDC) program, or food stamps) and exercise of dispute and enforcement rights under federal consumer protection statutes. The ECOA is particularly important to electricity sales because it may be an important tool to prevent the practice of "redlining." "Redlining" refers to the practice of denying credit or altering credit terms to residents, simply because they live in certain neighborhoods.[29]

Furthermore, under the ECOA, a creditor may not alter deposit requirements or adopt different disconnection procedures based on race, receipt of public assistance, or because another family member owes a balance on a separate account. The ECOA incorporates the "effects test" used in housing and employment litigation to prevent discrimination that, while not intended to rely on an illegal basis for credit denial, has a demonstrated adverse effect on a minority group with racial, ethnic, or other characteristics listed in the ECOA.[30]

The Fair Credit Reporting Act (FCRA)[31] is a more specialized federal statute aimed



Connecticut's policy concerning discrimination in the application for electricity service provides that... "No electric supplier...shall refuse to provide electric generation services to, or refuse to negotiate to provide such services to any customer because of age, race, creed, color, national origin, ancestry, sex, marital status, sexual orientation, lawful source of income, disability or familial status. No electric supplier shall decline to provide electric generation services to a customer for the sole reason that the customer is located in an economically distressed geographic area or the customer qualifies for hardship status....No electric supplier shall terminate or refuse to reinstate electric generation services except in accordance with the provisions of Title 16 of the General Statutes." *An Act Concerning Electric Restructuring, Public Act No. 98-28*, §29.

primarily at the practices of organizations who maintain data on consumers and sell it to businesses, who then use it as part of their evaluation of applications for credit, insurance, or employment, or other transactions initiated by consumers. The statute was originally enacted in 1970, but was extensively amended in 1996 (Public Law 104-208). The FCRA requires that when a business relies on information in a consumer report to deny or alter credit terms, certain disclosures must be made in writing to the affected consumer. This law currently applies to public utilities and will apply as well to retail energy suppliers. A key change of the 1996 FCRA amendments requires that providers of credit information, such as stores, banks, insurers, energy suppliers, and others, report accurate information.

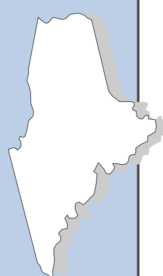
Both statutes are enforced by consumers (who may file for statutory damages and attorney fees), the state Attorneys General, and the Federal Trade Commission through cease and desist orders, court action, restitution, and injunctive relief, as well as other specialized agencies for creditors under their jurisdiction, such as banking authorities.

Credit Terms (Truth in Lending Act)

Both the state regulation of finance charges, consumer credit terms, and the federal Truth in Lending Act (TILA)[32] have not generally applied to public utilities because these laws apply to a narrow definition of credit. For the most part, the federal TILA and state consumer credit laws regulate transactions in which a finance charge is imposed, i.e., when a debt is deferred and an interest rate charged for installment payments. A credit transaction subject to the TILA triggers a host of disclosure, procedural,

Selected Services Subject to Competition

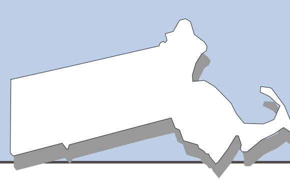
California has ordered that so-called "revenue cycle services" (billing, metering and consumer services) be subject to competition for large customers in 1998 and for residential and small commercial customers beginning in 1999.



Maine's electric restructuring legislation mandates that billing and metering competition commence no later than 2002, two years after full retail competition begins in 2000.

Pennsylvania's electric restructuring legislation does not specifically provide for competition in services other than generation. However, the recent PECO Energy restructuring plan settlement calls for billing and metering competition in that utility's service territory beginning in 1999.

Massachusetts' legislation requires a study of metering, customer billing and information services competition by January 2001.



and substantive requirements. It is possible that retail energy suppliers will devise payment plans that resemble credit sale transactions or sponsor open-end credit plans for the sale of electricity which will trigger the TILA disclosure and disputed bill procedures. It is more likely, however, that electricity sales will not fall under the TILA because sellers will typically not structure contracts to allow for extended payments, partial payments, or a finance charge as that term is defined in the TILA. Instead, retail electric sale contracts that require the customer to pay in full within a certain number of days or pay a specified late fee will be more common transactions. These terms, by themselves, usually do not qualify as "credit" within the meaning of the TILA.

Unfair and Deceptive Practices

The Federal Trade Commission (FTC) Act prohibits "unfair methods of competition and unfair or deceptive acts or practices in or affecting commerce."[33] All states have adopted a similar statute, sometimes referred to as the "Unfair and Deceptive Practices Act" or UDPA, typically enforced by the state Attorney General. Under federal law the FTC has jurisdiction to define such practices in generic rules where deceptive practices are widespread, or to enforce the prohibition through individual adjudicatory proceedings, using cease and desist orders and taking businesses to federal court to obtain penalties and redress to affected consumers. Most state Attorneys General have similar remedies under UDPAs. While the FTC Act does not give consumers a private right of action, under some state laws individual consumers can sue businesses and seek actual damages (with a minimum amount), equitable relief, and attorney's fees. Class actions by consumers are also an option under some state laws. Historically, these statutes have been used to prevent unlawful and deceptive advertising, deceptive pricing, and unfair trade practices, and to regulate special sales approaches, such as door-to-door sales, multi-level marketing or pyramid selling schemes, and negative option plans.

The FTC Act exempts federal banking and insurance industries on the grounds that these industries are closely regulated by other federal and state authorities. Some state statutes also exempt state banking and insurance industries because unfair and deceptive practices are also tightly regulated by other state authorities. Some state UDPA laws specifically exempt public utilities[34] and about half of the state consumer protection laws have a provision which generally exempts transactions which are subject to some regulation by a state or federal administrative agency from regulation under the UDPA.[35] State courts have interpreted this exemption both narrowly (the specific conduct must be condoned by the state or federal agency) and broadly (the business is exempt if it is subject to regulation), depending on the nature of the state exemption statute and the nature of the regulatory scheme. This situation will need to be clarified with respect to the activities of retail energy suppliers, particularly the affiliates of regulated distribution companies.

Debt Collection

The Fair Debt Collection Practices Act[36] (FDCPA) regulates the conduct of debt collection agencies and others, including attorneys, who collect debts owed to a third party. Therefore, although an important consumer protection statute, the FDCPA does not directly apply to a seller or creditor, e.g., energy supplier, who collects debts owed directly to him or her under most circumstances. Third parties who collect debts owed to a utility or a competitive electric service provider would, however, be subject to the FDCPA.

Telemarketing and Consumer Fraud and Abuse Prevention Act

Congress enacted this legislation[37] to combat the growth of telemarketing fraud by providing law enforcement agencies with powerful new tools to provide consumers with new protections, and to provide guidance for lawful telemarketing activities. Under this Act, the FTC adopted the Telemarketing Sales Rule.[38] Key provisions of the Rule require specific disclosures by telemarketers, prohibit misrepresentations, set limits and times telemarketers may call consumers, prohibit calls after a consumer asks not to be called, and requires that specific business records be kept for two years. The Telemarketing Sales Rule also restricts telemarketing calls to the hours between 8 am and 9 pm. Utilities and competitive electric suppliers will be subject to this Act and the FTC Rule.

Cooling Off Rule

The FTC has also promulgated the Cooling Off Rule[39] which gives consumers three days in which to cancel and receive a full refund on sales of $25 or more when the sales transaction is made at the consumer's home, his/her workplace, or at facilities rented by the seller on a temporary basis, such as hotel rooms or convention centers. The Cooling Off Rule is relevant to electricity sales that occur in locations away from the seller's normal place of business. Sales that occur subject to this Rule require the seller to provide the buyer with a summary of the buyer's cancellation rights, and two copies of an actual cancellation form. Some states have extended their version of this rule to sales made over the telephone, thus triggering a 3-day right of cancellation for sales of electricity via telemarketing.

Definition of Services Subject to Competition

All state electric restructuring legislation adopted to date defines competitive services to include, at a minimum, the generation and sale of electricity. The most controversial issue surrounding the definition of competitive services has been whether they should include billing, metering, and associated consumer services.

Proponents of competition in billing and metering services point to the potential for customer savings if a competitive market is allowed to develop. Suppliers also argue that they need to be able to package these services with electricity sales so as to link the many products that may be bundled, thus emphasizing the key role played by the bill as a marketing tool. Other advocates for billing and metering competition point to the value of “real-time” meters that send proper price signals concerning customer electricity use at certain hours of the day or times of the year, a feature not available on most residential and small commercial customer meters today. Many suppliers have pointed out that their motivation to sell electricity to low-usage consumers may be greatly influenced by their ability to market additional (and perhaps more profitable) services to them. The impetus of technological developments in the metering industry in particular, coupled with lower costs, suggests that customers will have substantially more choices for metering and billing in the future.

Opponents of competitive billing and metering point out that customers will be confused enough with generation competition without allowing additional services to be unbundled from the current utility bill and subject to competitive marketing. In addition, union representatives in particular emphasize the impact on local jobs if billing and metering are suddenly subject to competition. Utilities themselves argue that these services are part of the natural delivery services monopoly and that some of these services cannot be provided more economically in a competitive market.

Whether states move to outright competition in these areas or allow developments to proceed at a slower pace, they will face the following concerns:

Should suppliers be able to offer alternative meters to their customers that allow for different pricing options, such as time-of-day and time-of-year prices?

Some higher-use customers may have a lower monthly bill with meters that allow more sophisticated pricing structures. Suppliers may also offer energy management or home energy systems with meters that allow integration of energy services with alarms, automatic appliance controls, and even telecommunications services. However, low-usage residential customers (who do not have electric hot water or heat or other high-use appliances) may not benefit from such oppor-

Norway’s *Guidelines for Metering and Settlements of Electricity Trade* (November 5, 1994) require large customers to obtain real-time meters to allow billing on their actual hourly usage characteristics. Residential and small commercial customers with traditional meters are billed on the adjusted load profile of the network, or distribution area in question. The adjusted load profile is calculated as the difference between the network owner’s system load profile, adjusted for network losses, and usage by end users with real-time meters. These load profiles are calculated quarterly. Most states in the U.S. have adopted Norway’s approach.

tunities because both the equipment (meter) and billing costs are likely to be higher than the potential savings.

Who should be able to issue bills to customers?

Suppliers argue that it is unfair to allow distribution utilities to issue a combination bill that includes both regulated and competitive services without providing such an option to them as well. The California deregulation order, which allows suppliers to issue a unified bill, makes it clear that suppliers who negotiate such an option with distribution companies must assume the risk of collection for both the regulated and stranded cost charges. This will require suppliers to conduct their own collection programs without benefit of the distribution company's "threat of termination" or "disconnection" service policies.

How should these services be unbundled from current rates?

If suppliers can sell and bill separately for metering services, state regulators will then have to unbundle these charges from current rates and give customers who obtain them a credit on their distribution charges so that customers do not pay twice.

Should meter installation be tested differently?

Some states may want to separate physical installation of the meter from automatic meter reading options offered by some suppliers. This would allow utilities to maintain control over meter installation (with its safety considerations), but allow customers to have alternative meter usage data accessed directly by suppliers.

How should customers with standard meters be treated?

Customers who do not have or want a "high tech" meter should be able to participate in the competitive market with their standard mechanical meter. Although some states require that large industrial customers obtain "real time" meters to enable more accurate billing, all other customers should be billed on the basis of standard load profiles for the customer class in question, rather than on different rates for each hour of service. This approach was pioneered in Norway, a country that moved to retail electric competition several years ago.

Licensing Criteria for Suppliers

Many industries and businesses whose activities can affect public health and safety, such as hospitals, nursing homes, insurance companies, debt collection agencies, home repair contractors, and banks are required to meet minimum state requirements to conduct business in that state. In a similar vein, whether referred to as "registration," "certification," or "licensing," most state electric restructuring legislation requires prospective electricity suppliers to comply with minimum state requirements.

Typically, states require a form of security, or bond, to assure reimbursement of customer deposits, advance payments, or restitution ordered by a regulatory body. The amount of the bond is set high enough to compensate parties adversely affected by a firm's failure to perform. Requiring a bond (like a performance bond on a construction project) or a letter of credit has at least two beneficial consequences. First, a company's ability to obtain a bond or a letter of credit is proof of its financial soundness. Second, the bond provides a source of funds for compensation to individual parties. Most states require a bond as a condition of licensure, the amount of which reflects the different types of retail suppliers likely to emerge.

Typical state electric restructuring legislation requires the state regulatory authority, usually the public utility commission, to license retail electric or gas suppliers before conducting business within the state. Licensing requirements may include the following minimum criteria:

- Evidence of general financial integrity
- A bond or equivalent security in an amount based on the applicant's volume of sales
- Evidence that the firm is technically qualified to conduct its proposed business
- Information on disciplinary or enforcement actions in other states in which it operates
- Information concerning the applicant's consumer complaint history in other states
- Disclosure of its ownership structure and affiliates doing business in the state
- Location(s) of the applicant's office in the state, or, if no office, its agent for service of process and its geographic scope of business
- A description of services that will be offered
- The name and telephone number of a customer service individual for customers to contact the supplier

The licensing process should not be a barrier to entry, as is the typical Certificate of Convenience and Necessity used for most public utility licensing today. Rather, the role of the utility commission in the licensing process is to ensure financial safety, system reliability and basic consumer protections.

Disclosures

Specific disclosure requirements that a state should consider as part of its regulatory scheme for electric suppliers are described in detail in Chapter 1.

Regulation of Credit Practices

Most state electric restructuring legislation imposes only those credit-related rules on suppliers that already exist in state and federal consumer credit laws (such as the ECOA, discussed earlier in this Chapter). However, some states have recently required suppliers to comply with most or all credit and application-for-service rules currently applicable to utilities. The Massachusetts and Connecticut electric restructuring statutes require suppliers to comply with existing consumer protection rules with respect to credit and application-for-service. The Connecticut statute also requires suppliers to recognize a customer's right to a medical emergency, winter-based moratoria on cancellation, and payment arrangement requirements.

Regulation of Contract Terms

Suppliers typically include contract terms most favorable to them in their pre-printed contracts with residential and small commercial customers. While disclosure of these contract terms in a *Terms of Service* document, coupled with a right of rescission, is an important consumer protection tool, disclosure alone may not be sufficient remedy. It is unlikely that suppliers will compete on many of these pre-printed terms. Some suppliers may offer superior customer service (such as fast-acting 1-800 call centers, more billing options and fast response to disputes and questions). It is less likely that suppliers will compete to offer generous payment arrangements for those who cannot pay in full every month, waive contractual cancellation penalties for customers who need to move to Default Service, or waive collection costs for low-income customers. Therefore, the following substantive contract terms are candidates for state regulation:

- **Late Fees:** States may establish a maximum monthly late fee. No more than 1.5% per month is typical, but Massachusetts rules prohibit late fees for residential customer transactions.

- **Notice of Renewal:** Some states require suppliers to notify customers at least two billing periods in advance of the need to renew and the consequences of failure to renew.

- **Length of Contract Term:** Some states are considering whether residential and small commercial contracts should have a maximum term (1-2 years), at least during a transition period. This would allow customers to become more experienced prior to allowing door-to-door sales representatives to obtain customer signatures on 5-year agreements with excessive early termination penalties, a practice that occurred in Toronto, Canada, at the onset of retail gas competition.

- **Collection Costs:** Suppliers should be prohibited from charging collection costs or damages in addition to the overdue amount.

- **Payment Arrangements:** States have differed on whether suppliers must offer at least one reasonable payment arrangement to residential customers prior to contract cancellation.

- **Notice of Cancellation:** Suppliers should be required to provide a minimum notice period prior to cancellation of a contract for non-payment and establish the content of the notice.

- **Medical Emergency:** Most states (Connecticut is a notable exception) have not required suppliers to honor a medical emergency at the customer's household if declared by a registered physician for a minimum period, but this is a typical provision of state utility regulation.

- **Pre-Payment Meters:** Pre-payment meters are controversial because they allow customers to be disconnected from all electric service during extreme weather without notice or compliance with health and safety concerns. States may want to consider ruling against the use of such meters as a condition of service for low-income customers, unless suppliers require such meters as a condition of service for *all* its customers.

- **Deposits:** Several states regulate a maximum deposit amount for residential customers. In Pennsylvania, suppliers may not require the deposit unless customers have a history of failure to pay for electric service, thus prohibiting suppliers from basing their credit worthiness decisions on non-utility service history.

- **Right of Rescission:** Most states require suppliers to provide all new customers with a 3-day right of rescission that is triggered by their receipt of the *Terms of Service* brochure with its price and contract term disclosures.

- **Dispute Resolution:** Most states require suppliers to notify customers of their right to refer disputes to the state regulatory agency, if a supplier cannot resolve it satisfactorily. The ability to refer disputes to a neutral regulatory agency has an additional benefit beyond that offered to the individual consumer. Dispute resolution authority allows the regulatory commission to monitor sales practices as well as compliance with basic consumer protection rules.

Regulation of Unfair Trade and Marketing Practices

Most state electric restructuring legislation invests the state utility commission with authority to adopt regulations which prohibit unfair trade and marketing practices by energy suppliers. Other states may rely on their existing consumer protection laws and the jurisdiction of the Attorney General for this type of regulation. Regardless, every state so far has sought to adopt specific provisions to prevent slamming and to encourage renewable energy development.

Slamming

One potentially unfair trade practice that most states have already decided to regulate is "slamming," which is switching the customer's supplier without permission or with fraudulently-obtained permission, a practice that has been the subject of widespread complaint and condemnation in the telephone industry. This course of conduct is sufficiently likely to occur with competitive electric suppliers that state restructuring legislation has either prohibited the practice outright or authorized the regulatory commission to prevent it.

The most controversial issue associating with anti-slamming regulation has been whether customers must provide signed authorization before their distribution company switches suppliers. Proponents of such an approach view a signed authorization as the best method to prevent slamming. On the other hand, signature requirements provide an enormous advantage to existing utilities, as the signature acts as a barrier to contracts with competitive suppliers.

For example, if a customer personally communicates with a distribution company to authorize the switch and provides identifying information, such as his/her account number, additional barriers to finalizing this transaction should not be erected. After all, the contract to supply electricity is between the customer and the supplier. The distribution company's obligation is merely to record the change for billing purposes. Reliance on oral communication from the customer in such situations should be allowed. But what if the supplier has initiated contact with the customer (via telemarketing or mail) and has obtained valid consent over the telephone? Should the distribution company be allowed to switch the customer's supplier upon notice from the new supplier? What if the customer has cashed a check from the new supplier which states that cashing the check will cause the customer's electricity supplier to be changed?[40] Opening up the authorization to include anyone other than the consumer opens the door to fraud. Even requiring that the authorization be signed by the consumer (thus preventing telemarketing alone from finalizing the sale) is fraught with difficulty, as the check cashing scheme demonstrates.

Recent legislation in California,[41] Massachusetts,[42] and Connecticut[43] reflects a growing attempt to deal with this problem. Customers who are solicited by a supplier, or his agent, to switch companies must not be switched until the new supplier obtains authorization in one of three methods: oral verification by an independent third-party; electronic verification; or written authorization. These options have proven to be the least likely to result in slamming, but they are not foolproof if a supplier is determined to commit fraud. In addition, this approach is likely to be most successful if accompanied by a "right to rescind" any contract for electricity within three business days after a customer receives a written *Terms of Service* brochure. If state policy links the "right of rescission" with receipt of contractual disclosures, suppliers will be stimulated to confirm their sales promptly. This approach will also accommodate the expectations of most customers who do not currently sign written contracts to obtain electricity, natural gas, propane and fuel oil.

At their annual meeting in California in 1998, the National Association of Attorneys General (NAAG) formed a task force to study the marketing of "green" power and other claims by electricity marketers. The task force is working to develop a set of model marketing guidelines for consideration by states moving to retail electric competition.

Marketing Renewable Energy

A marketing and disclosure issue that is sure to remain controversial is the manner in which electricity sources should be advertised as "green," "renewable," "less polluting," or "environmentally-friendly," how such disclosures should be regulated and, if so, by who and how. Recent national and regional surveys have confirmed that many customers want to shop for electricity based on environmental criteria.[44] Marketing campaigns conducted as part of the New Hampshire electric competition pilot program in 1997 confirmed this trend. Suppliers used such phrases as "We donate 1% of your power bill to groups working to protect New Hampshire's environment" (Working Assets, Inc.) and "Now is the time to start saving money and saving the planet" (Green Mountain Energy Partners, selling Hydro Quebec power). Because customers want to include environmental criteria in making their electricity purchase decisions, suppliers will want to focus on these aspects of their service to obtain new customers.

There is risk associated with marketing renewable energy, particularly insofar as advertising is concerned. Both state and federal laws prohibit deceptive advertising. At the federal level, the Federal Trade Commission (FTC) enforces the Federal Trade Commission Act;[45] state Attorneys General typically have primary authority for implementing state consumer laws relating to deceptive advertising and marketing. The FTC has issued policy statements describing its policies with respect to unfair or deceptive advertising claims.[46] In addition, the FTC requires that all important marketing claims, whether expressed or implied, be substantiated.[47] The FTC has adopted specific guidance for environmental claims, *FTC Guides for the Use of Environmental Marketing Claims (16 CFR § 260).* While these guidelines do not specifically mention electricity sales, general provisions, such as a requirement that sellers document their claims based on a reasonable interpretation by consumers, do apply. The *FTC Guides*, among other things, state that general environmental claims should be avoided or qualified, as necessary, to prevent deception about the specific nature of the environmental benefit.